

Implementation of Senate Bill 361

Thank you Chairman Gallegos and committee members. I am Linda Brookins with the Texas Commission on Environmental Quality's Water Supply Division and with me as a resource this morning is Elston Johnson, the Manager of the Water Supply Division's Public Drinking Water Section. I am here to provide an overview of the status of TCEQ's implementation of Senate Bill 361.

Overview

In 2009, the 81st Legislature enacted Senate Bill 361 requiring affected utilities to develop and implement an emergency preparedness plan or EPP to ensure operations of their water systems at a minimum water pressure of 35 pounds per square inch during power

outages lasting more than 24 hours that are a result of a natural disaster.

Requirements for the Commission

Senate Bill 361 required the TCEQ to:

- develop rules to implement Senate Bill 361 by December 1, 2009;
- develop a template to assist affected utilities in the development of their EPP;
- review and approve EPPs;
- review and approve extension requests to the EPP submittal and implementation deadlines;
- review and approve waiver requests; and,
- provide access to commission financial, managerial, and technical assistance contractors.

Applicability

Senate Bill 361 defines an affected utility as a retail public utility, an exempt utility; or, provider or conveyor of potable or raw water service that furnishes water service to more than one customer in a county with a population of 3.3 million or more or in a county with a population of 400,000 or more adjacent to a county with a population of 3.3 million or more.

In TCEQ's August 2009 proposal to implement Senate Bill 361, the agency proposed using population numbers from the Texas State Data Center and Office of the State Demographer for 2005, the midpoint between federal decennial censuses. Using these population figures, the rule would have applied to Harris County and Fort Bend County.

However, the TCEQ received comments during the rule's comment period stating that it should follow the Code Construction Act which defines the term "population" to mean "the population shown by the most recent federal decennial census", which at the time was the 2000 census. The TCEQ agreed with the comment and in the adopted rule used the 2000 decennial census to determine applicability.

Based on the 2000 census Senate Bill 361 only applies to Harris County. Further, Senate Bill 361 applies only to affected utilities serving customers in Harris County regardless of whether or not the facility is located in Harris County.

Requirements for the Affected Utilities

By statute and agency rule, affected utilities were required to submit their EPP to the commission for review and approval by **March 1, 2010**. In addition, affected utilities were required to begin implementation of the requirements of their approved EPP by **July 1, 2010**.

Senate Bill 361 authorized the TCEQ to grant extensions to the submittal and implementation deadlines.

To meet the requirements of Senate Bill 361 an affected utility that supplies, provides, or conveys surface water must develop an EPP that includes provisions for "...the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers."

Implementation Status

The TCEQ is in the final stages of completing its implementation of the requirements for Senate Bill 361.

The TCEQ's activities to date related to implementing Senate Bill 361 include the following:

- Adopted rules to implement Senate Bill 361 on November 18, 2009.
- Posted a template for an EPP along with instructions on the agency's website.
- Entered into a contract with Texas Rural Water Association for Financial, Managerial, and Technical assistance. Through this effort, the TCEQ has assisted numerous systems in drafting their EPPs.

As the TCEQ began receiving and reviewing EPPs, staff found that most of the entities requesting an extension

to the submittal deadline made that request stated that the compliance timeframe was too short.

Entities requesting an extension to the implementation deadline have offered a more varied set of reasons for the request, including: needing additional time to complete the bidding process; needing more time to work with consulting engineers in the purchasing of equipment; and, needing more time to amend their wholesale contracts.

Based on current applicability, approximately 695 systems meet the definition of an affected utility. As of August 11, 2010, the TCEQ has received 549 EPPs and approved 344 EPPs. One hundred and forty-six affected utilities have not submitted EPPs. Of those 146 affected

utilities, 60 have requested an extension to the submittal deadline; 41 have requested a financial waiver; and, 45 have not responded at all.

To help ensure compliance with Senate Bill 361, the TCEQ has made presentations to the regulated community or their representatives at events like the TCEQ's annual Trade Fair; at the Public Drinking Water Conference; the Association of Water Board Directors; and, Texas Water, sponsored by the Texas Section of the American Water Works Association and the Water Environment Association of Texas.

The TCEQ maintains a web page to provide information on the bill's applicability, deadlines, compliance options, and instruction on how to complete the EPP shell. The

TCEQ has also provided financial, managerial and technical assistance to numerous utilities.

That concludes my testimony. I would be happy to answer any questions.